

NATURAL RESOURCES BOARD AGENDA ITEM

3.A.3.

Item No. _____

SUBJECT: Adoption of emergency Board Order WT-24-06(E), creation of NR 328-subchapter III relating to shore erosion control for rivers and streams

FOR: APRIL 2006 **BOARD MEETING**

TO BE PRESENTED BY: Mary Ellen Vollbrecht, Section Chief, Bureau of Watershed Management

SUMMARY:

This emergency rule establishes two general permits for activities that otherwise require an individual permit. A similar emergency rule provided streamlined permitting for the 2005 construction season, for activities that met prescribed permit conditions. The new emergency rule proposal includes changes to several permit conditions based on experience implementing the rule in 2005. Department staff continue to work with internal and external advisors to develop critical technical methodologies for a permanent rule for shore protection on rivers and streams. Adoption of this emergency rule will allow continued permit streamlining while a permanent rule is still under development.

NR 328 - Subchapter III defines and describes general permit standards for Biostabilization and Integrated Bank Protection on waterways less than 35 feet wide. The Emergency Rule has been modified from the 2005 version to add a grass species allowed for native seed mixtures, allow greater toe protection for the Integrated Bank Treatment GP in Driftless Area counties, and allow greater project length for the Integrated Bank Treatment GP to match the new NRCS technical standard. A housekeeping change adds a note regarding NR 341 grading permit requirements.

Waterfront property owners - from private landowners to business, builders and developers - will be interested in the additional general permits provided in the emergency rules, and the clear procedures and standards. State and federal agencies who design, install or fund shore protection and habitat projects along rivers and streams will benefit from the streamlined general permits. The public who use and enjoy Wisconsin's navigable waters will also benefit from standards established to protect the public interest.

RECOMMENDATION: Adopt emergency Board Order WT-24-06(E), creation of NR 328-subchapter III relating to shore erosion control on rivers and streams

LIST OF ATTACHED MATERIALS:

No	<input type="checkbox"/>	Fiscal Estimate Required	Yes	<input checked="" type="checkbox"/>	Attached
No	<input checked="" type="checkbox"/>	Environmental Assessment or Impact Statement Required	Yes	<input type="checkbox"/>	Attached
No	<input type="checkbox"/>	Background Memo	Yes	<input checked="" type="checkbox"/>	Attached

APPROVED:

/S/

Bureau Director, Russ Rasmussen

/S/

Administrator, Todd Ambs

/S/

Secretary, Scott Hassett

03/27/2006

Date

03/27/2006

Date

03/27/2006

Date

cc: Amy J. Lemberger - AD/5
Mary Ellen Vollbrecht - WT/4
Pam Biersach - SCR-Fitchburg (6 copies)
Liesa Lehmann - WT/4
Paul Cunningham - FH/4

DATE: March 10, 2006

FILE REF: 3500

TO: Natural Resources Board

FROM: Scott Hassett, Secretary

SUBJECT: Adoption of Emergency Rule NR 328 – Subchapter III, Shore Erosion Control for Rivers and Streams, Board Order WT-24-06 (E)

1. Why are these emergency rules being proposed?

Wisconsin 2003 Act 118, which went into effect on February 6, 2004, modified provisions in chapter 30 governing the regulation of activities in Wisconsin's navigable public waters. The legislation establishes a new regulatory framework where activities are either authorized as exemptions subject to rules adopted by the Department; allowed under a general permit through rules adopted by Department; or reviewed under an individual permit.

This emergency rule establishes two general permits for activities that otherwise require an individual permit. A similar emergency rule provided streamlined permitting for the 2005 construction season, for activities that met prescribed permit conditions. This new emergency rule proposal includes changes to several permit conditions based on experience implementing the rule last year. An emergency order is proposed in order to streamline permitting for the 2006 construction season, for habitat improvement activities undertaken by agencies who are regular cooperators with DNR, as well as others needing some form of shore erosion control. Without this emergency rule, all shoreline projects on rivers and streams will require an individual permit, with 3-4 month permit review times that will essentially prohibit habitat or other projects from being installed this year.

Department staff continue to work with internal and external advisors on a permanent rule proposal. This work focuses on developing critical methodologies and technical standards for more intensive types of shore erosion control projects on rivers and streams. Permanent rule development is nearing completion - and staff anticipate seeking hearing authorization for a permanent rule at the July 2006 Natural Resources Board meeting, with a goal of having a permanent rule in effect for 2007. Adoption of this emergency rule will allow continued permit streamlining while a permanent rule process is completed.

2. Summary of Rule Proposal

The primary purpose of this emergency rule is to establish two general permits. There are no statutory exemptions for the placement of shore erosion control on rivers and streams - without this rule, projects in these settings all require an individual permit. NR 328 - Subchapter III defines and describes general permit standards for Biostabilization and Integrated Bank Protection on waterways less than 35 feet wide. Department staff, federal agency staff and external consultants developed the standards. The Biostabilization general permit allows placement of structures such as fiber rolls, fiber mats, live stakes, brush mattresses, fascines, branch packing, encapsulated soil lifts and natural vegetation. The Integrated Bank Protection general permit allows placement of toe protection such as riprap or crib walls, and bank protection such as brush layering, brush mattresses, fiber rolls, live stakes, bank reshaping and seeding.

3. How does this proposal affect existing policy?

The rule creates standards for additional structures to be authorized by a general permits. The standards are consistent with past practice and will streamline permitting for the specified activities. The Emergency Rule has been modified from the 2005 version to change the following:

General Permit Standards:

- Note added to identify NR 341 grading permit requirements for projects with land disturbance greater than 10,000 square feet on the bank
- Smooth brome grass added as an allowed grass species that may be incorporated into the native seed mixtures required for site stabilization on agricultural lands, to increase the choices of seed mixes currently available
- Integrated Bank Treatment General Permit - For listed counties located in the Driftless Area of southwestern Wisconsin, toe protection may be placed to the OHWM plus 2 feet to accommodate agricultural stream bank protection projects with space limitations for proper bank sloping. The highest bank elevation for the placement of toe protection is maintained at the OHWM plus one foot for counties not in the Driftless Area.
- Integrated Bank Treatment General Permit -The maximum length of integrated bank protection allowed under the GP is increased to match the new NRCS technical standard. In the 2005 emergency rule, the length was limited to a single site of 150 feet and maximum project size of 500 feet. The single site limitation prevented many projects from being eligible for a general permit. The new standard allows a total project length that does not exceed 500 feet total per ¼ mile of stream (1320 feet).

4. Has the Board dealt with these issues before?

Yes. The Board authorized Emergency and Permanent Rules in 2004 for shore erosion control on inland lakes and impoundments. The Board authorized an Emergency Rule in 2005 for shore erosion control on rivers and streams. The proposed rule is modified from the 2005 Emergency Rule.

5. Who will be impacted by the proposed rules? How?

Waterfront property owners – from private landowners to business, builders and developers - will be interested in the additional general permits provided in the emergency rules, and the clear procedures and standards. State and federal agencies who design, install or fund shore protection and habitat projects along rivers and streams will benefit from the streamlined general permits. The public who use and enjoy Wisconsin's navigable waters will also benefit from standards established to protect the public interest.

6. Information on environmental analysis, if needed.

The Bureau of Environmental Analysis and Review has determined that these rule revisions are a Type III action under s. NR 150, Wis. Adm. Code, and no environmental analysis is required.

7. Recommendation.

Department staff recommend adoption of the proposed emergency rule NR 328-Subchapter III as described in the attached Natural Resources Board Order WT-24-06 (E).

Fiscal Estimate — 2005 Session

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number NR 328-Subchapter III

Subject

Standards for placement of shore erosion control on streams and rivers

Fiscal Effect

State: ☐ No State Fiscal Effect
☐ Indeterminate

Check columns below only if bill makes a direct appropriation
or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues
<input type="checkbox"/> Decrease Existing Appropriation	<input checked="" type="checkbox"/> Decrease Existing Revenues
<input type="checkbox"/> Create New Appropriation	

☐ Increase Costs — May be possible to absorb
within agency's budget.

☐ Yes ☐ No

☒ Decrease Costs

Local: ☒ No Local Government Costs

☐ Indeterminate

1. ☐ Increase Costs
☐ Permissive ☐ Mandatory

2. ☐ Decrease Costs
☐ Permissive ☐ Mandatory

3. ☐ Increase Revenues
☐ Permissive ☐ Mandatory

4. ☐ Decrease Revenues
☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:

☐ Towns ☐ Villages ☐ Cities

☐ Counties ☐ Others

☐ School Districts ☐ WTCS Districts

Fund Sources Affected

☐ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Chapter 20 Appropriations

s. 20.370 (4) (bi)

Assumptions Used in Arriving at Fiscal Estimate

Rule Summary:

This emergency rule package establishes two general permits for the placement of shore erosion control measures on rivers and streams that would otherwise have been subject to individual permits under current law.

Assumptions:

According to 2004 data, there are 240 permits processed annually for shore protection on rivers and streams. Of that amount, 216 require an individual permit at a cost of \$300, and 24 are exempt from a permit fee because they are issued to state or federal agencies. Therefore, annual permit revenue under current law totals \$64,800 (216 permits x \$300).

Under the proposed emergency rule, it is estimated that 180 projects would require a \$300 individual permit, 36 projects would be eligible for a new \$50 general permit, and 24 would continue to be fee-exempt because they would be issued to state or federal agencies. Therefore, annual permit revenue under the proposed rule is estimated to be \$55,800 [(180 individual permits x \$300) + (36 general permits x \$50)]. This will result in a decrease of \$9,000 in annual permit revenue.

By converting an estimated 36 individual permits per year to general permits, the proposed emergency rule would streamline the permitting process and thus decrease the amount of workload needed to process permits by 630 hours, or 0.35 FTE, with an associated cost reduction of \$20,200 in salary and fringe benefits (630 hours x \$32/hour salary and fringe).

Long-Range Fiscal Implications

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	

Fiscal Estimate — 2005 Session

Page 2 Assumptions Narrative Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 328-Subchapter III

Assumptions Used in Arriving at Fiscal Estimate – Continued

Fiscal Estimate Worksheet — 2005 Session

Detailed Estimate of Annual Fiscal Effect

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	LRB Number Bill Number	Amendment Number if Applicable Administrative Rule Number NR 328-Subchapter III
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Subject

Standards for placement of shore erosion control on streams and rivers

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$	\$ - 20,200
(FTE Position Changes)		(FTE)	(- 0.35 FTE)
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$	\$ - 20,200
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS			- 20,200
SEG/SEG-S			-
State Revenues		Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			- 9,000
SEG/SEG-S			-
Total State Revenues		\$	\$ - 9,000

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ -20,100	\$
Net Change in Revenues	\$ -9,000	\$

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature	Telephone No. 266-2794	Date (mm/dd/ccyy)

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING EMERGENCY RULES

The Wisconsin Natural Resources Board proposes an emergency order to create NR 328, subch. III relating to shore erosion control on rivers and streams.

WT-24-06 (E)

Analysis Prepared by the Department of Natural Resources

Statutory Authority: ss. 30.12(1) and (1p), 30.2035, 30.206, 227.11(2), and 227.24, Stats

Statutes Interpreted: ss. 30.12(1), (1g), (3) and (3m) and 30.206, Stats.

Explanation of Agency Authority:

The Department has authority under ss. 30.12 and 30.206, Stats., to promulgate rules to establish general permits.

Related statute or rule:

These rules relate directly to regulation of activities in navigable waters under ch. 30, Stats., waters designations in ch. NR 1, and the NR 300 series of rules.

Plain Language Analysis:

The purpose of this emergency rule is to establish two general permits with appropriate conditions, and to establish standards for projects that may be authorized under an individual permit. There are no statutory exemptions for the placement of shore erosion control on the banks of rivers and streams.

Standards for general permits and individual permits in this section are based on the science of fluvial geomorphology for determining erosive conditions at a site. Fluvial geomorphology involves studying the influence of flowing surface water on stream channels through the processes of erosion and deposition.

This order establishes general permits for biostabilization and integrated bank protection on waterways less than 35 feet wide and allows placement of these structures in "areas of special natural resource interest" (ASNRI).

Federal Regulatory Analysis: Any activity that results in a discharge (including deposits and structures) into "waters of the United States" is regulated by the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. An Individual Permit from the Corps is required, unless Wisconsin regulates the project in its entirety under chapter 30, Stats., in which case the project is authorized by the Corps under general permits GP-01-WI or GP-LOP-WI. Dredging or discharge into waters declared navigable under Section 10, Rivers and Harbors Act, 1899 is also regulated, and requires an Individual Permit from the Corps.

Comparison with Adjacent States:

Minnesota

The Minnesota Department of Natural Resources, Division of Waters is responsible for Administrative Rules 6115.0215 (Restoration of Public Waters) and 6115.0210 (Structures in Public Waters). Minnesota's regulations include exempted activities and general permits, and the regulated activities are roughly similar to Wisconsin. Minnesota's stated resource protection goals are more protective than Wisconsin; however, their Administrative rule criteria are more subjective.

Michigan

Inland lakes and streams are regulated under Part 301 and of the Natural Resources and Environmental Protection Act (NREPA), PA 451 of 1994, as amended. Under Part 301 the construction of any type of shore stabilization structure such as a sea wall, bulkhead, revetment, etc. at or below the ordinary high water mark of the lake or stream requires a permit. Michigan's stated goals and procedures (except MI

has no erosion control structures exempt from permits) are similar to Wisconsin; however, their specific decision criteria are more subjective.

Illinois

Illinois has no firm detailed guidelines related to specific permitting of erosion control structures. The U.S. Army Corps of Engineers often plays the lead role in permit issuance of erosion control structures in Illinois. The Army Corps consults with Illinois DNR, Illinois EPA and the U.S. Fish and Wildlife Service when reviewing projects. Project reviews typically focus on water quality and endangered resources. Illinois' regulated erosion control activities are less protective of the environment than in Wisconsin, and their decision criteria more subjective.

Iowa

Pursuant to Chapter 461A, erosion control structures placed below the ordinary high water mark require a permit for rivers, streams and lakes under the jurisdiction of the DNR (Sovereign Lands Construction Permit). Iowa Administrative Code only identifies authority, and the Department offers limited guidance and historical precedence for conducting project reviews. Environmental reviews consist of a record of review for protected species (state listed endangered or threatened), rare natural communities, state lands and waters in the project area, including review by personnel representing state parks, preserves, recreation areas, wetlands, fisheries and wildlife. Iowa's regulated erosion control activities are less protective of the environment than in Wisconsin and their decision criteria more subjective.

Summary of Factual Data and Analytical Methodologies:

Standards are based on state-of-the-art science for determining erosion energy conditions at a site that corresponds to the presence of habitat features, and the potential for shore erosion at the site.

Analysis and Documents supporting determination of Small Business Effect: Any person placing a structure or making similar physical modifications to public navigable waters either qualifies for an exemption or must obtain a general or individual permit under state statute. To comply with this rule, small businesses follow the same requirements as other waterfront property owners: (1) complete a general permit application; or (2) complete an individual permit application. Schedules, application steps and compliance/reporting requirements are very basic for all applicants, and most projects can be planned and conducted by individuals with no specific professional background.

Anticipated Private Sector Costs: No significant fiscal effect on the private sector is anticipated.

Effect on Small Business: Small businesses who wish to conduct regulated activities on or near navigable waterways will be affected by the rule. Specific standards will provide clarity and consistency in the permitting process.

Agency Contact Person: Pam Biersach, Pamela.Biersach@dnr.state.wi.us, (608) 275-3282.

SECTION 1. Chapter NR 328, subch. III is created to read:

SUBCHAPTER III

SHORE EROSION CONTROL STRUCTURE ON RIVERS AND STREAMS

NR 328.31 Purpose. The purpose of this subchapter is to establish reasonable procedures and limitations for general permits and individual permits for placement of shore erosion control structures on rivers and streams as regulated under s. 30.12, Stats., in order to protect the public rights and interest in the navigable, public waters of the state as defined in s. 30.10, Stats.

NR 328.32 Applicability. (1) Except as provided in s. 30.2023, Stats., this subchapter applies to construction, placement and maintenance of shore erosion control structures regulated under s. 30.12(1), (3)(br) and (3m), Stats. Any person that intends to construct, place or maintain a shore erosion control

structure in any river or stream shall comply with all applicable provisions of this subchapter and any permit issued under this subchapter.

(2) Shore erosion control measures such as grading to establish a stable slope, revegetation or other biostabilization methods that do not involve the placement of structures on the bed of a waterway are not regulated under s. 30.12, Stats., or this subchapter.

Note: A permit is required under s. 30.19, Stats., and ch. NR 341 if land disturbance or excavation exceeds 10,000 square feet on the bank of the navigable waterway. Bank shaping activities necessary to protect stream and river shorelines from erosion on lands used entirely for agriculture are exempt from this subchapter.

NR 328.33 Definitions. In this subchapter:

(1) "Biostabilization" means a structure that relies solely on biological materials and may include bank reshaping. Biological shore erosion control structures include but are not limited to native vegetation, fiber rolls, fiber mats, live stakes, brush mattresses, fascines, branch packing, encapsulated soil lift.

(2) "Hard armoring" means a shore erosion control structure that relies solely on inert materials and includes but is not limited to riprap, reno mattresses (slabs of rock encapsulated in gabion baskets, laid on a slope) and seawalls.

(3) "Inert materials" means those materials that slowly degrade, such as chemically treated wood, stone, stainless and galvanized steel, plastics and synthetic polymers.

(4) "Integrated bank treatment" means a structure that combines 2 separate treatments: toe protection at the base of the bank and biostabilization on the remaining upper portion of the bank. Above the toe protection, the remainder of the bank may be reshaped, and may include but is not limited to revegetation by seeding or with brush layering, brush mattresses, fiber (coir) rolls, live stakes or wattles. Biostabilization may also be incorporated as part of the toe protection.

(5) "Ordinary high water mark" means the point on the bank or shore up to which the presence and action of water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognizable characteristics.

(6) "Toe" means the most waterward edge of a shore erosion control structure.

(7) "Toe protection" means a structure that relies on inert materials such as stone and structural measures alone, or in combination with other biological materials to protect the base of the bank.

NR 328.34 General permits. (1) PROCEDURES. (a) General permits shall be processed according to the procedures in ch. NR 310.

(b) If the department determines that a proposal submitted under this section has the potential to impact an endangered or threatened species in accordance with s. 29.604, Stats., the application shall be deemed incomplete. The department may not consider the application complete or issue a general permit until the applicant submits documentation to demonstrate one of the following:

1. The project avoids impacts to the endangered or threatened species in accordance with s. 29.604, Stats.

2. The project has received an incidental take authorization under s. 29.604, Stats.

(c) If the applicant modifies the project plans to meet the requirements of par. (b), the modified plans shall be submitted before the department may consider the application complete or issue a general permit.

(2) APPLICABLE ACTIVITIES. Projects that meet all the criteria in sub. (3) and either sub. (4) or (5) shall be eligible for general permit coverage under ss. 30.12(3)(br) and 30.206, Stats.

Note: Eligibility for an exemption or general permit does not automatically result in a federal permit or state water quality certification for fill in wetlands. Some projects involving minimal wetland fill may be eligible for authorization under a U.S. Army Corps of Engineers general permit which has already been granted state water quality certification [see non-reporting and 404 GP activities in the table at <http://www.mvp.usace.army.mil/docs/regulatory/WIMATRIX.htm>] or a general permit under s. 281.36(8), Stats. (under development) All other projects affecting wetlands will require individual water quality certification including public notice as required by s. 401, Federal Clean Water Act, and s. 281.36(2), Stats., and carried out under chs. NR 103 and 299. For further instructions, see the department's website at www.dnr.wi.gov under the topic "Waterway and Wetland Permits."

(3) GENERAL STANDARDS. (a) The structure may not be placed in a wetland.

(b) The project may not occur on navigable waterways greater than 35 feet wide measured from ordinary high water mark to ordinary high water mark.

(c) The erosion control structure design and placement may not result in a net decrease in the density or size-structure of tree-falls or logs in the water or intersecting the bank.

(d) Except for the counties of Buffalo, Columbia, Crawford, Dane, Dunn, Grant, Green, Iowa, Kenosha, La Crosse, Lafayette, Pepin, Pierce, Racine, Richland, Rock, St. Croix, Sauk, Trempealeau, Vernon, and Walworth, all trees greater than 4" DBH (diameter breast high) removed as part of the erosion control project within 35 feet of the ordinary high water mark shall be incorporated into the waterward portion of the erosion control design.

Note: The listed counties are located in ecological landscapes of the state where riparian habitats are typified by oak barrens, oak opening, mesic prairie, wet prairie, and wet-mesic prairie natural communities. County-level designations were made from interpretations of Wisconsin's Ecological Landscape maps and Finley's Original Vegetation Map of Wisconsin.

(e) The structure may be placed only by a riparian.

(f) To minimize adverse impacts on fish movement, fish spawning, egg incubation periods and high stream flows, placement may not occur during the following time periods:

1. For trout streams identified under s. NR 1.02(7) and perennial tributaries to those trout streams, September 15 through May 15.

2. For all waters not identified in subd. 1. and located south of state highway 29, March 15 through May 15.

3. For all waters not identified in subd. 1. and located north of state highway 29, April 1 through June 1.

4. The applicant may request that the requirement in subd. 1., 2., or 3. be waived by the department on a case-by-case basis, by submitting a written statement signed by the local department fisheries biologist, documenting consultation about the proposed shore erosion control project, and that the local department fisheries biologist has determined that the requirements of this paragraph are not necessary to protect fish spawning for the proposed project.

(g) Any grading, excavation and land disturbance shall be confined to the minimum necessary for the construction and may not exceed 10,000 square feet.

Note: A permit is required under s. 30.19, Stats., and ch. NR 341 if land disturbance or excavation exceeds 10,000 square feet on the bank of the navigable waterway. Bank shaping activities necessary to protect stream and river shorelines from erosion on lands used entirely for agriculture are exempt from this subchapter.

(h) Erosion control measures shall meet or exceed the technical standards for erosion control approved by the department under subch. V of ch. NR 151. Any area where topsoil is exposed during construction shall be immediately sodded, seeded and mulched, covered with erosion mat or ripped to stabilize disturbed areas and prevent soils from being eroded and washed into the waterway.

Note: These standards can be found at the following website:
<http://dnr.wi.gov/org/water/wm/nps/stormwater/techstds.htm>

(i) Unless part of a permanent stormwater management system, all temporary erosion and sediment control practices shall be removed upon final site stabilization. Areas disturbed during construction or installation shall be restored.

(j) Vegetation, such as seeding and dormant plantings, shall be plant species native to the area of Wisconsin where the project is located. Non-invasive cool season species such as Virginia wild rye, Timothy, alfalfa, alsike clover, orchard grass, Smooth brome grass and red top, may be incorporated into native seed mixes for the purpose of rapid stabilization of critical sites currently in agricultural use.

(k) All equipment used for the project shall be designed and properly sized to minimize the amount of sediment that can escape into the water.

(L) No waterward extension of the property is permitted other than what is reasonably necessary to conduct the project and protect the existing bank. No soil or similar fill material may be placed in a wetland or below the ordinary high water mark of any navigable waterway.

(m) The stabilization method shall follow the natural contour of the shoreline.

(n) Shoreline protection measures shall begin and end at a stabilized or controlled point.

(o) Except as required for appropriate toe installation of the erosion control structure, dredging is not permitted under this section.

(p) The stabilization practices shall be maintained in good condition.

(4) BIOSTABILIZATION. Biostabilization on the bed or bank of a navigable river or stream may be authorized under this general permit if it meets all of the following requirements and limitations:

(a) Fiber (coir) rolls shall be appropriately secured using methods such as hardwood stakes or earth anchors.

Note: Spacing between anchoring devices will need to reflect anticipated stream flow velocities.

(b) Structural stabilization practices shall be sloped to 1.5 horizontal to one foot vertical or flatter. Banks treated only with vegetation shall be sloped to 2 foot horizontal to one foot vertical or flatter.

(5) INTEGRATED BANK TREATMENT. Integrated bank treatment on the bed or bank of a navigable river or stream may be authorized under this general permit if it meets all of the following requirements and limitations:

(a) Integrated bank treatment may not be located on federal or state designated wild or scenic rivers under ss. 30.26 and 30.27, Stats.

(b) Stone associated with toe protection shall be clean field stone or quarry stone appropriately sized according to the USDA, NRCS Wisconsin Supplement to the Engineering Field Handbook Chapter 16 - Streambank and Shoreline Protection.

Note: These standards can be found at the following website:
<ftp://ftp-fc.sc.egov.usda.gov/WI/efh/efh-chapter16.pdf>

(c) Toe protection materials may not be placed above the ordinary high water mark elevation plus one foot, except for the counties of Buffalo, Crawford, Grant, Iowa, Jackson, La Crosse, Lafayette, Monroe, Richland, Sauk, Trempealeau and Vernon, where toe protection materials may not be placed above the ordinary high water mark elevation plus 2 feet for projects immediately adjacent to agricultural fields in active cultivation.

Note: The listed counties are located in a unique geological area of the state untouched by glaciers, called the "Driftless Area." County-level designations were made from interpretations of the Ice Age Deposits of Wisconsin (1964) map by the Wisconsin Geological and Natural History Survey, University of Wisconsin - Extension.

(d) Structural stabilization practices shall be sloped to 1.5 horizontal to one foot vertical or flatter. Banks treated only with vegetation shall be sloped to 2 feet horizontal to one foot vertical or flatter.

(e) The total project length may not exceed 500 linear feet per ¼ mile of stream (1320 feet).

(6) INDIVIDUAL PERMIT REQUIRED. (a) Activities which do not meet the applicable standards in sub. (3) and either sub. (4) or (5), or are otherwise ineligible for a general permit, shall require an individual permit.

(b) The department has authority under s. 30.206(3r), Stats., to require an individual permit in lieu of a general permit.

NR 328.35 Individual permits. (1) PROCEDURES. (a) Individual permits shall be processed according to the procedures in ch. NR 310.

(b) If the department determines that a proposal submitted under this section has the potential to impact an endangered or threatened species in accordance with s. 29.604, Stats., the application shall be deemed incomplete. The department may not consider the application complete or issue a general permit until the applicant submits documentation to demonstrate one of the following:

1. The project avoids impacts to the endangered or threatened species in accordance with s. 29.604, Stats.

2. The project has received an incidental take authorization under s. 29.604, Stats.

(c) If the applicant modifies the project plans to meet the requirements of par. (b), the modified plans shall be submitted before the department may consider the application complete or issue a general permit.

(2) APPLICABLE ACTIVITIES. Any shore erosion control structure which is not authorized by a general permit under s. NR 328.34, requires authorization by an individual permit pursuant to s. 30.12(1), Stats.

(3) STANDARDS. Construction, placement or maintenance of a shore erosion control structure on a river or stream that meets the standards in s. 30.12(3m), Stats., may be authorized under an individual permit.

(4) EXISTING PERMITS. A shore protection structure which is authorized by an existing department permit shall continue to be authorized, provided the structure is maintained in compliance with all the

conditions of the original permit. Any modifications to the structure that do not comply with the original permit conditions shall require a new individual permit and shall comply with all standards in this section.

NR 328.36 Enforcement. (1) Noncompliance with the provisions of ss. 30.12 and 30.206, Stats., this subchapter, or any conditions of an exemption, general permit or individual permit issued by the department, constitutes a violation and may result in a forfeiture, fine or imprisonment. The department may seek abatement under s. 30.294, Stats., for any activity in violation of ss. 30.12 and 30.206, Stats.

(2) If the activity may be authorized by a general permit under s. 30.206, Stats., failure of an applicant to follow the procedural requirements may not, by itself, result in abatement of the activity.

(3) When an after-the-fact permit application has been filed with the department, the department shall follow the procedures in ch. NR 301 for violations.

(4) Any violation of these rules shall be treated as a violation of the statutes they interpret or are promulgated under.

(5) No person may place a shore erosion control structure in a navigable waterway if the activity is not eligible for an exemption, authorized by a general permit or individual permit issued under this subchapter, or otherwise authorized under this subchapter.

SECTION 2. FINDING. The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken as exempt from a permit, or under a general permit. There are no statutory exemptions for shore protection on rivers and streams. Without emergency rules to create general permits, all shore protection projects on rivers and streams require an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2006 construction season, with specific standards for shore erosion control structures on rivers and streams.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on May 8, 2006.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)